IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2006

Coram

The Honourable Mr.Justice ELIPE DHARMA RAO

and

The Honourable Mr.Justice S.K.KRISHNAN

W.P. No.25741 of 2004

P.Elangovan .. Petitioner

vs.

1. The Director General of Police
Chennai 600 004.

2. The Registrar
Tamilnadu Administrative Tribunal
Chennai. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus to call for the orders relating to the order of the second respondent herein dated 3.3.2004 in O.A.No.3108 of 2003 confirming the order of the first respondent herein dated 18.08.2003 in C.No.76582/Con.V (2)/99 and quash the same and consequently direct the first respondent herein to reinstate the petitioner in service with all attendant benefits from 18.08.2003.

For petitioner : Mr.AR.L.Sundaresan, S.C. For Mrs.AL.Ganthimathi
For 1st respondent : Mrs.Geetha, AGP

O R D E R

(Order of the Court was made by ELIPE DHARMA RAO, J.)

This writ petition is directed against the order of dismissal of O.A.No.3108 of 2003 filed by the petitioner, challenging the order dated 18.8.2003 passed by the first respondent, by invoking suo motu power of review conferred under Rule 15(a)(i) & (ii) of the Tamil Nadu Police Subordinate and Service (Discipline and Appeal) Rules (hereinafter referred as 'Rules'), enhancing the punishment of postponement of increment for one year with cumulative effect to that of removal from service, on consideration of the same enquiry

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report, on the basis of which punishment of postponement of increment for one year with cumulative effect was awarded by the appointing authority in P.R.No.78/92.

2. The case of the petitioner is as follows:

(i) The petitioner joined the service as Grade-I Police Constable on 15.4.1974, was subsequently promoted as Head Constable on 20.05.1980. He received 55 rewards in his service, though received two minor punishments during his career.

(ii) A charge memo was issued in T.R.No.78/92 under Rule 3(b) of the said Rules. Totally four charges are levelled against the petitioner, the first one is that the petitioner accepted Rs.550/- from Raju during January 1989 for not booking a case against Raju's mother, the second is that he accepted Rs.400/- on 18.3.1989 from Raju for not taking action against Raju, son of Manganathan, the third is that he falsely claimed T.A. for Rs.15/- on 27.2.1989 and excess T.A. Rs.105/- and the last one is that he furnished false certificate in T.A.bills.

(iii) A detailed enquiry was conducted by the Deputy Superintendent of Police, Keeranur. During the oral enquiry, 11 prosecution witnesses were examined and two witnesses were examined on the side of defence, whereas the person from whom the amount of bribe is alleged to have received by the petitioner, namely Raju, was not examined. Based on the evidence recorded at the time of the enquiry, the enquiry officer found that the charges levelled against the petitioner were proved. On consideration of the enquiry report, the Superintendent of Police, Tiruchirapalli district imposed the punishment of postponement of increment for one year with cumulative effect. The petitioner has not preferred any appeal against the imposition of punishment but has undergone the punishment. The punishment was given effect to from May 1998 and it was over by May 1999.

(iv) Thereafter the first respondent by invoking suo motu power of review conferred under Rule 15(a)(i)(ii) of the said Rules, has issued the show cause notice on 3.5.1999. Against the show cause notice, he approached the Tamil Nadu Administrative Tribunal by way of filing O.A.No.3587 of 1999. In the said Original Application, the Tribunal initially granted interim stay and ultimately the Tribunal dismissed the same by an order dated 8.10.2002 with an observation that the petitioner shall give a reply to the show cause notice to the first respondent and the first respondent should pass final orders. Accordingly, a detailed explanation was submitted on 4.3.2003 to the first respondent and on consideration of the above said explanation on the basis of the same enquiry report, by the order dated 18.8.2003, the first respondent enhanced the punishment to that of removal from service. Against that order, O.A.No.3108 of 2003 was filed.

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(v) The Tribunal on consideration of the facts and circumstances of the case dismissed the Original Application. Hence, the writ petition, challenging the dismissal of O.A.No.3108 of 2003.

3. Mr.Sundaresan, the learned senior counsel appearing on behalf of the petitioner has pointed out the lapses committed by the first respondent in conducting enquiry and imposing punishment as follows:

The crucial witness, namely Raju, from whom the petitioner is alleged to have demanded and received the bribe amount, was not examined, which goes to the root of the matter. Therefore, the enquiry officer should not have held that the charges are proved and on the basis of which the original punishment also could not be imposed. Thereafter, the enhancement of the punishment to that of removal from service, by exercising the power of review under Rule 15(A)(i) & (ii) of the said Rules, is also invalid, in the absence of the examination of the said witness Raju.

4. The learned senior counsel appearing for the petitioner further raised a ground with regard to the delay in conducting the enquiry. According to him, the incident occurred in the year 1989. The enquiry was initiated after a delay of three years, i.e. in 1992 and the enquiry was concluded in the year 1997. The punishment was imposed in 1997. Two years later, the show cause notice under Rule 15(A)(i)(ii) of the Rules was issued. Therefore, the entire exercise of invoking the power of review against the punishment awarded by the appointing authority, the Superintendent of Police, Trichy and the further enhancement of the punishment to that of removal from service by the respondent are contrary to the settled principles of law. Therefore, the enhanced punishment cannot be legally sustained under Rule 15(A)(i)(ii) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules.

5. The learned senior counsel appearing for the petitioner further contended that as contemplated under Rule 15 A of the said Rules, if the reviewing authority is not satisfied with the punishment imposed by the appointing authority, for exercising suo motu power of review under Rule 15A, six months period is prescribed. The original order of punishment as imposed on 31.7.1997, whereas the first respondent by invoking suo motu power of review enhanced the punishment from that of postponement of increment for one year with cumulative effect to that of removal from service by the order dated 18.08.2003, after a period of six years. Therefore, it is hit by the proviso to Rule 15A.

6. The learned senior counsel for the petitioner further contended that the first respondent has not conducted the enquiry under Rule 3(b) of the Rules to enhance the punishment, after giving

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opportunity to the petitioner, as contemplated under the Rules. In support of his contention, the learned counsel for the petitioner has relied upon the decision of this Court in 2004 (3 L.W. 32) M.Nagarajan & Otrhers v. The Registrar, High Court, wherein the Division Bench held that if the procedure contemplated under Rule 23 (1)(i) is not properly followed in the case, while enhancing the penalty, the order is violative of the procedure, offending the natural justice, thereby causing prejudice to the delinquent. Therefore, the procedure contemplated under Rule 3(b) of the said Rules is not followed by the first respondent, while reviewing the punishment.

7. The learned senior counsel appearing for the petitioner lastly contended that the first respondent has not specified the proposed punishment in the show cause notice. As per proviso to Rule 15 A of the said rules, no order imposing or enhancing any penalty shall be made by any reviewing authority, unless the Government servant concerned has been given a reasonable opportunity to make representation against the penalty proposed (emphasis supplied). It is mandatory on the part of the reviewing authority to indicate the proposed punishment in the show cause notice. Then only the petitioner can effectively make a representation against the penalty that is proposed. Therefore, the impugned order may be set aside.

8. Per contra, the learned Additional Government pleader submits that the Tribunal has gone into the matter and satisfied with regard to the delay, because after issuance of the show cause notice, the petitioner has approached the Tribunal, challenging the show cause notice and obtained the interim order in 1999. After dismissal of the Original Application in 2002, the respondent has taken the matter for consideration and imposed the punishment. Therefore, no interference is called for in the order passed by the Tribunal.

9. Considering the facts and circumstances of the case, after going through the entire materials placed on record and the provision of law, with regard to the contention of termination to exercise the suo motu power under Rule 15A is concerned, the appointing authority, the Superintendent of Police, Trichy imposed the punishment on 31.7.1997, the first respondent on the basis of the report of the enquiry officer issued the show cause notice by invoking the power conferred under Rule 15A on 3.5.1999, as he thought that it is disproportionate. We have gone through the notice. There is no explanation with regard to delay, except saying that the punishment imposed by the appointing authority is lesser punishment. Considering the evidence recorded in the enquiry and the findings of the enquiry officer, if the first respondent wants to enhance the punishment, the first respondent ought to have specified the proposed punishment in the show cause notice. Therefore, the contention raised by the learned senior counsel for the petitioner is legally well founded.

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11. With regard to the first contention of the learned senior counsel that the crucial witness, viz. Mr. Raju, who was alleged to have stated that the petitioner has demanded the amount and it was paid to the petitioner, it is the admitted case of the respondent as well as by the Enquiry Officer that the said Raju was not examined as a witness while the other witnesses were examined. By non-examining the crucial witness, viz. Raju the contents of the complaint were not established and therefore the findings of the Enquiry Officer are erroneous and the punishment ought not to have been imposed on the petitioner.

12. With regard to the next contention of delay in invoking the suo motu powers conferred under Rule 58A of the Rules is concerned, either for filing the appeal against the order of the original authority, i.e. the appointing authority or for invoking the power, the subordinate legislation in its wisdom fixed six months' time. Therefore, in so far as the contention of the learned Additional Government Pleader that against the show cause notice the petitioner has approached the Tribunal by filing the original application, got the interim orders and subsequently the said original application was dismissed and it was only thereafter the order enhancing the punishment was passed is concerned, we are concerned that the said power was invoked only on 3-5-1999. Therefore, there is a delay of more than two years from the year 1997 for invoking the said power. There is no explanation coming from the respondents for the said delay. Therefore, invoking the power under Section 15A after the lapse of six years without offering any reason for such delay is not justifiable in law and even on this ground also, the impugned order is liable to be set aside.

13. With regard to the next contention, as could seen from the show cause notice, there is no mention about the proposed punishment against the petitioner. As contemplated under Rule 15, the respondent has to specify the proposed punishment in the show cause notice itself. Further, as seen from the language of Rule 15(A)(i) of the Rules, even after the enhancement of the punishment, which was imposed by the appointing authority, when the same was reviewed by the reviewing authority, an enquiry has to be conducted under Rule 3(b) of the Rules. However, no enquiry was conducted by the reviewing authority under Rule 3(b). Relying on the very same enquiry report submitted by the Deputy Superintendent of Police, the first respondent has passed the order, which is contrary to law.

14. In the case on hand, since the crucial witness was not examined, when the respondent authority has failed to specify the proposed punishment in the show cause notice, when there was no explanation coming from the respondent for the delay of two years for invoking the power under Rule 58A and that no enquiry was conducted when reviewing authority reviewed the order passed by the

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appointing authority, we hold that the impugned order enhancing the punishment is in violation of Rule 15(A) of the Rules and, therefore, liable to be set aside and, accordingly, it is set aside.

15. The writ petition is allowed and the order passed by the Tribunal is set aside, so also the punishment of removal from service imposed against the petitioner. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ajr

To

1. The Director General of Police
Chennai 600 004.

2. The Registrar
Tamilnadu Administrative Tribunal
Chennai.

1 cc to Mrs.AL.Ganthimathi, Advocate, sr. 51967
1 cc to the Government Pleader, High Court, Madras, Sr. 52791

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